

20044038E



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

Date: MAR 24 2004

Contact Person:

Identification Number:

Contact Number:

UIL 501.00-00

Employer Identification Number:

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

You were incorporated in the state of \_\_\_\_\_ on \_\_\_\_\_. Your mission is to provide assistance in producing low-budget films; to help up and coming, new, and unknown writers, actors, directors, and producers to self-produce. According to your by-laws you give financial, material, logistical and emotional support for film and theatre productions of, primarily, new works by local playwrights and screenwriters. The work will be produced by local directors, screenwriters, actors and other film and theatre artists.

Your long-term goal is to provide instruction in the areas of play writing, screen writing, acting and producing. Education and practical experience will be provided through associated lectures, workshops, film productions and theatre productions, which will be chosen by your Board. Information of the film making process will be stored in a journal, which eventually will be made available on a web-site. You have no concrete plans for classroom instruction.

You will sponsor films, irrespective of their commercial appeal. You will not avoid or favor a project based on its commercial appeal. Films and theatre productions that will be sponsored will be chosen by the executive committee. The sponsored film or theatre production must enter into a formal agreement or contract with you in order to ensure your ability to enforce appropriate usage of donated equipment and funds.

You will not sponsor any films or theatre productions in which an officer has a financial interest. At no time will any director benefit directly or have any direct ownership of property resulting from the sponsorship. However, you will develop and produce your own films and theatre productions. The executive committee will produce works that are written by themselves and others. You will produce the works of officers and directors, but you are not limited to only producing work of your officers and directors.

The rights and titles to the films and theatre productions will be owned by you if they are developed by you. Should you choose to produce the work in partnership with another organization, then the respective percentages will be stated in a contract.

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A service fee will be charged for access to your donated hardware (digital cameras, lights, tools, sets, props) and other sources. Individuals who utilize the services will be required to enter into a contract depending on the services. You will also take a percentage of any donations that you accept on behalf of another organization or company. Revenue will be generated from ticket sales from theatre productions and/or film screenings, and monies for DVD and video sales. Tickets will be sold at the venue, or through a ticket agency, such as

Marketing will be accomplished by soliciting the local press, distributing flyers and using all publicity practices available.

Solicitation of films will be accomplished through distributors via festivals, film organizations, and independent distribution companies to increase visibility. If a distributor determines there is commercial appeal for the work, you will pursue to distribute the films commercially. You seek to distribute the films to organizations that distribute low budget films. The films may be sold.

The rights of the films and theatre productions may be owned by you. If you produce the film, you will own the rights, and the distributor will own some portion also depending on the terms of the contract.

Your response to our questions state that at this time, no one will be paid any compensation. You are not able to state whether any members of the governing body will receive payments from you, or through financial interests in an organization with which you will do business.

Section 501(c)(3) of the Internal Revenue Code exempts from federal income tax corporations organized and operated exclusively for, among others, charitable and educational purposes.

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations states that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirements of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(d)(3) of the regulations provides that the term "educational" relates to the instruction of the public on subjects useful to the individual and beneficial to the community.

Revenue Ruling 66-178, 1966-1 C.B. 138, holds that an organization that fosters and develops the arts by sponsoring a public art exhibit at which the works of unknown but promising artists are gratuitously displayed may qualify for exemption under section 501(c)(3) of the Code. The subject organization does not sell or offer the displayed works for sale.

Rev. Rul. 71-395, 1971-2 C.B. 228, on the other hand, holds that a cooperative art gallery formed and operated by a group of artists for the purposes of exhibiting and selling their works does not qualify under section 501(c)(3) of the Code.

Rev. Rul. 66-220, 1966-2 C.B. 209, holds that a nonprofit corporation organized and operated exclusively for educational purposes to operate a noncommercial educational broadcasting station presents educational, cultural and public interest programs is exempt from Federal income tax under section 501(c)(3) of the Code.

Rev. Rul. 79-369, 1979-2 C.B. 226, holds that an otherwise qualifying organization created to develop and promote an appreciation of contemporary symphonic and chamber music by recording and selling, primarily to educational institutions, new works of unrecognized composers as well as neglected works of more established composers is exempt from tax under section 501(c)(3) of the Code. The music selected for recording has a limited commercial market and is not generally produced by the commercial music publishing and recording industry for sale to the public. The organization sells its recordings primarily to libraries and educational institutions. The records are not made available for sale through commercial record dealers except in a few specialty shops, but are sold through mail orders. It does not engage in advertising. The Board is comprised of recognized experts in the contemporary music field, none of whose works may be considered for recording.

Rev. Rul. 67-342, 1967-2 C.B. 187, provides that a nonprofit organization which produces educational films concerning a particular subject and which disseminates its educational material to the public by means of commercial television may qualify for exemption under section 501(c)(3) of the Code where the films are presented in a noncommercial manner.

Rev. Rul. 75-471, 1975-2 C.B. 207, holds that a nonprofit corporation formed to promote the art of filmmaking by conducting annual festivals to provide unknown independent filmmakers with opportunities to display their films and by sponsoring symposiums on filmmaking qualifies for the exemption under section 501(c)(3) of the Code. The Board generally rejects films that have clear commercial overtones and that are likely to appeal to commercial film distribution companies. Further, the organization does not sell films shown at the festivals, they remain the property of the filmmakers. Also, the organization does not encourage or participate in any negotiations for commercial exploitation of the films.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), the requirement in section 501(c)(3) that an organization be organized and operated "exclusively" for exempt purposes has been recognized as meaning that the organization have its "primary" activity in the performance of exempt functions. The Court further held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

Operating for the benefit of private parties constitutes a substantial nonexempt purpose. Old Dominion Box Co. v. United States, 477 F. 2d 340 (4th Cir. 1973), cert. denied 413 U.S. 910 (1973).

Section 501(c)(3) of the Code sets forth two main tests for qualification for exempt status. An organization must be both organized and operated exclusively for purposes described in section 501(c)(3). Your Articles of Incorporation are sufficient for satisfaction of the organizational test.

You, however, do not satisfy the operational test. To satisfy the operational requirements for exemption under section 501(c)(3), you must establish that your operations serve public rather than private purposes. If even one of your substantial activities has a private purpose, such as benefiting private parties, you will not qualify for exemption. See Better Business Bureau, supra.

The information you submitted discloses that you will sponsor films irrespective of their commercial appeal. You will solicit films through distributors via festivals, film organizations, and independent distribution companies. If a distributor determines there is a commercial appeal for the work, you will pursue to distribute the films commercially. Advertising and marketing of the films and theatre productions are planned activities. The films may also be sold.

In Rev. Rul. 79-369, supra, the music selected for recording had a limited commercial market and was not generally produced by the commercial music publishing and recording industry for sale to the public. The organization sold its recordings primarily to libraries and educational institutions. The records were not made available for sale through commercial record dealers, except in a few cases.

In Rev. Rul. 75-471, supra, the Board rejected films that had clear commercial overtones and that are likely to appeal to commercial film distribution companies. The organization did not encourage or participate in any negotiations for commercial exploitation of the films. Moreover, the organization did not sell films shown at the festivals, they remained the property of the filmmakers. See also Rev. Rul. 67-342, supra, and Rev. Rul. 66-220, supra.

These Revenue Rulings clearly indicate that an organization may achieve its educational purposes so long as the programs are presented in a noncommercial manner. The absence of commercial advertising is a key factor in determining the noncommercial nature of the activity. Your activities, however, have determinable commercial overtones.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns.

Contributions to you are not deductible under section 170 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views to this office, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and a copy will be forwarded to the Ohio Tax Exempt and Government Entities (TE/GE) office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 877-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

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When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service  
T:EO:RA:T:4  
1111 Constitution Ave, N.W.  
Washington, D.C. 20224

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

-S-

Joseph Chasin  
(Acting) Manager,  
Exempt Organizations  
Technical Group 4